

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

=====X
UNITED STATES OF AMERICA,

ECF

NOTICE OF MOTION

Indictment No. 07 Crim. 732

- against -

OSCAR LEMUS,

Defendant.

=====X

PLEASE TAKE NOTICE, that upon the annexed affidavit of Christopher Riley, Esq., sworn to on the 4th day of October, 2007, the annexed Memorandum of Law and all prior proceedings, discovery, and pleadings had herein, the undersigned will move the District Court for the Southern District of New York, at the United States Courthouse located at 300 Quarropas Street, White Plains, New York 10601, on November 14, 2007, or on any date the Court deems appropriate, for the following relief:

1. An Order pursuant to F.R.C.P. 7(f) directing the Government to provide Oscar Lemus with a Bill of Particulars specifically including the following information:

(a) Set forth the identity of any other individuals involved with the crime, including, but not limited to, the identity of the individual who allegedly drove the defendant to the scene of the crime and allegedly supplied the defendant with the monies to purchase the alleged contraband and the photographs utilized for the subject documents;

(b) Set forth the specific location that defendant allegedly unlawfully, willfully and knowingly transferred an identification document on or about the 3rd day of March, 2007;

(c) Set forth the date and time of each such act;

(d) Set forth the specific location that defendant allegedly unlawfully, willfully and knowingly transferred an identification document on or about the 11th day of February, 2007;

(e) Set forth the date and time of each such act;

(f) Set forth the two (2) identification documents allegedly transferred on the 11th day of February, 2007;

(g) Set forth the ten (10) identification documents allegedly transferred on the 3rd day of March, 2007;

(h) Set forth to whom the aforementioned documents were transferred;

(i) Set forth from whom the subject documents were received;

2. An Order pursuant to F.R.C.P. 16 directing disclosure and more specifically:

(a) An Order pursuant to F.R.C.P. 16(a)(1)(E) directing the Government to disclose any item or exhibit intended for use In its case-in-chief at trial or which is material to the defense; and for further necessary disclosure;

(b) An Order pursuant to F.R.C.P. (12)(b)(1) directing disclosure of the identity of the informant, and securing an interview of the informant, and discovery of impeachment and bias evidence and directing production of any prior investigations that establish the reliability and/or the unreliability of said informant;

(c) An Order pursuant to F.R.C.P. 16(a)(1)(B) directing disclosure of any oral written or recorded statement by the defendant and any written records containing the substance of any defendant statements;

(d) An Order pursuant to *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991) cert. den. 503 U.S. 972 (1992) directing discovery of the Government witnesses' personnel files;

(e) An Order directing the Government to disclose any intention to offer evidence at trial of any alleged prior bad acts, crimes, or predisposition evidence pursuant to F.R.E. 403 and/or F.R.E. 404(b) against Oscar Lemus, at least thirty (30) days prior to trial in this matter and directing a hearing on the admissibility at trial thereof and pursuant to F.R.C.P. 16 directing the Government to furnish a copy of defendant's prior record;

(f) An Order directing the Government to disclose any evidence of any exculpatory or mitigating nature pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963); *Strickler v. Greene*, 527 U.S. 263 (1999); *United States v. Agurs*, 427 U.S. 97 (1976); *United States v. Bagley*, 473 U.S. 667 (1985) and their progeny;

(g) An Order directing the Government to disclose its witnesses' statements pursuant to F.R.C.P. 26.2 at least thirty (30) days prior to trial in this matter;

(h) An Order pursuant to *United States v. Richtner*, 488 F.2d 170 (9th Cir. 1973) and *United States v. Cadet*, 727 F.2d 1453 (9th Cir. 1984) directing the prosecutor to furnish the defense a witness list;

(i) An Order pursuant to *Giglio v. United States*, 405 U.S. 150 (1972) directing disclosure of impeachment evidence relative to the subject informant and/or any other witness;

(j) An Order pursuant to F.R.C.P. 16 (a)(1)(G) directing the Government to disclose summaries of any expert testimony;

(k) An Order pursuant to F.R.C.P. 16(a)(1)(F) directing disclosure of the results or reports of any physical examination and of any scientific test or experiment;

(l) An Order pursuant to F.R.C.P. 16(a)(1)(E) directing disclosure of any item obtained from or belonging to defendant.

3. An Order granting a probable cause hearing relative to the arrest of defendant pursuant to *Dunaway v. New York*, 442 U.S. 200 (1979);

4. An Order pursuant to *People v. Huntley*, 15 N.Y.2d 72 (1965) and *Jackson v. Denno*, 378 U.S. 368 (1964) suppressing any statement allegedly made by defendant or in the alternative directing a hearing thereon;

5. An Order pursuant to 18 U.S.C. 3501(c) suppressing any statement by defendant on the basis of inordinate delay of bringing defendant before a Magistrate Judge or other officer or in the alternative directing a hearing thereon;

6. An Order pursuant to *United States v. Wade*, 388 U.S. 218 (1967) suppressing any out-of-court identification and any subsequent in-court identification of defendant or in the alternative directing a hearing thereon;

7. An Order pursuant to *United States v. Bryant*, 480 F.2d 785 (2nd Cir. 1973) directing an audibility hearing as to a certain compact disk of alleged recordings and a hearing on any purported transcript thereof;

8. An Order pursuant to F.R.C.P. 18 dismissing the instant Indictment on the basis of improper venue;

9. An Order pursuant to *United States v. Cuervelo*, 949 F.2d 559 (2nd Cir. 1991) and *Sherman v. United States*, 356 U.S. 369 (1958) dismissing the instant Indictment for violation of

defendant's Due Process right and/or the entrapment of defendant or alternately, directing a hearing thereon.

10. An Order permitting the defendant, Oscar Lemus, to make such further motions as may become appropriate during these further proceedings and reserving defendant's right to make further motions; and;

11. For such other and further relief as to this Court may seem just, proper and equitable.

Dated: White Plains, New York
October 4, 2007

Yours, etc.,

CHRISTOPHER RILEY (CR-0975)
Attorney for Defendant Oscar Lemus
56 Greenridge Avenue
White Plains, NY 10605
914/428-4010

TO: **HONORABLE STEPHEN C. ROBINSON**
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

CLERK OF THE COURT
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, NY 10601

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